**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR**

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**O R D E R**

**SMT. SHASHI MEHTA VS. THE STATE OF RAJ. & ANR.**

**S.B. CIVIL WRIT PETITION NO.4451/2002 UNDER ARTICLES 226 OF THE CONSTITUTION OF INDIA.**

**DATE OF ORDER : 7th July, 2006**

**PRESENT**

**HON'BLE MR.MOHAMMAD RAFIQ,J.**

Mr.Ravindra Paliwal,for the petitioner.
Mr.Rameshwar Dave, Dy.GA, for the respondents.

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**BY THE COURT**: -

In the present proceedings, the petitioner has challenged the order dated 8.10.2002 (Annex.4) whereby she has been posted on deputation at Dungarpur Balak Vidhyalya, Kheda (Aaspur), which is a Residential School run by Social Welfare Department of the Government of Rajasthan. The petitioner submitted a representation before the Director, Secondary Education, Government of Rajasthan, Bikaner stating therein that she never requested for her posting on deputation at the

Residential School. She was recently posted at Government Secondary School, Dewalpal whereas her husband is working at Dungarpur. She also stated that one Shri Hirendra Singh Chauhan, Senior Teacher (Science), who had submitted application for his appointment on deputation basis at the Residential School, Khera and, therefore, her posting on deputation should be cancelled qua him.

Learned counsel for the petitioner Shri Ravindra Paliwal has argued that even though the word 'deputation' has not been defined under the Rajasthan Service Rules, 1951, (hereinafter referred as the Rules of 1951), however, the aforesaid rules has defined the term 'Foreign Service" under Rule 7(10) of the Rules of 1951, which is reproduced hereinbelow: -

> "7(10) "Foreign Service" means a service in which a Government Servant receives his substantive pay with the sanction of Government from a source other than from the consolidated fund."

The learned counsel for the petitioner has also invited my attention towards the Rules 141 and 142 pertaining to foreign service contained in Part V of Chapter XIII of the Rules of 1951, which are also reproduced hereinbelow: -

> "141. Employees consent necessary for transfer to

> Foreign Service;- No Govt. Servant should be transferred to Foreign Service against his will provided that this Rule shall not apply to the transfer of a Government Servant to the service of body incorporated or not, which is wholly or substantially owned or controlled by the Government or to transfer of Government Servant to service paid from a Panchayat Samiti/Zila Parishad's fund constituted under the Rajasthan Panchayat Samiti and Zila Parishads Act, 1959 (Act no.37 of 1959).
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> 142. When transfer to Foreign Service admissible;- a transfer to foreign service is not admissible unless: -
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> (a) the duties to be performed after the transfer , are such, as should, for public reasons, be rendered by a Government Servant, and
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> (b) the Government Servant transferred holds, at the time of transfer, a post paid from a consolidated fund or holds a lien of such a post, had his lien not been suspended."

On the basis of the aforesaid rules, it is argued that since the petitioner is a member of Rajasthan Educational Subordinate Service created under the Rules of 1951, the petitioner should be posted only within the department. He also argued that the posting on deputation would essentially require consent of the Government servant concerned according to the rules of 141 of the Rules of 1951. In the present case, however, no such consent was ever given by the petitioner.

It was, therefore, prayed that the order dated 8.10.2002 (Annex.4) passed by the respondent no.2 may be quashed and set aside qua the petitioner and the respondents may be

directed to continue the petitioner as Teacher Grade-II in the subject of Biology (Science) in Senior Secondary School, Dewalpal District Dungarpur.

On the other hand, learned Dy. Government Advocate Shri Rameshwar Dave has aruged that as per the administrative exigency, the petitioner can be posted in any school in the District. It was also submitted that it is not correct to state that she could be posted only in Secondary School or Hr. Secondary School. Since the petitioner was an experienced teacher, the respondents have sent her alongwith 34 other teachers on deputation to various Residential Schools for teaching the students of SC/ST category. Learned counsel for the respondent also submitted that the petitioner was posted within the State of Rajasthan, therefore, it cannot be said that there was violation of any rules.

I have given my thoughtful consideration to the arguments made by learned counsel for both the parties and scanned the record.

It is trite law that deputation is a tripartite consensual concept where consent of the lending department, borrowing department and the employee concerned is always a must. In case, any of the three parties, refuses to consent for deputation, it cannot be materialized. In the present case, the petitioner was substantively appointed as Teacher Grade-II with the

respondent no.2, she had the liability to serve anywhere in the State within the Education Department as and when any administrative exigency of the respondents so demanded. But the petitioner could not be posted on deputation outside the department without her consent, which in the present case has been done.

The impugned order Annex.4 posting the petitioner on deputation was passed way back on 8.10.2002 and already more than three and half years have gone since then. During this period, the operation of this order has remained stayed pursuant to the order dated 17.11.2002 passed by this Court. Even otherwise also, this order cannot be enforced against the petitioner after such a long time. Although the respondents can transfer the petitioner anywhere within the department.

For the reasons aforesaid, the present writ petition is allowed and the order dated 8.10.2002 (Annex.4) is quashed and set aside.

**(MOHAMMAD RAFIQ), J**.

c.p.goyal/-